SUPREME COURT OF THE UNITED STATES

No. 2.—October Term, 1970

Evelle J. Younger, Appellant, *v.* John Harris, Jr., et al. | On Appeal From the United States District Court for the Central District of California.

[February 23, 1971]

Mr. Justice Black delivered the opinion of the Court.

Appellee, John Harris, Jr., was indicted in a California state court, charged with violation of the California Penal Code §§ 11400 and 11401, known as the California Criminal Syndicalism Act, set out below.[1] He then filed

[1] "§ 11400. *Definition*

"'Criminal syndicalism' as used in this article means any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change."

"§ 11401. *Offense; punishment*

"Any person who:

"1. By spoken or written words or personal conduct advocates, teaches or aids and abets criminal syndicalism or the duty, necessity or propriety of committing crime, sabotage, violence or any unlawful method of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change; or

"2. Wilfully and deliberately by spoken or written words justifies or attempts to justify criminal syndicalism or the commission or attempt to commit crime, sabotage, violence or unlawful methods of terrorism with intent to approve, advocate or further the doctrine of criminal syndicalism; or

"3. Prints, publishes, edits, issues or circulates or publicly displays any book, paper, pamphlet, document, poster or written or printed matter in any other form, containing or carrying written or printed

a complaint in the Federal District Court, asking that court to enjoin the appellant, Younger, the District Attorney of Los Angeles County, from prosecuting him, and alleging that the prosecution and even the presence of the Act inhibited him in the exercise of his rights of free speech and press, rights guaranteed him by the First and Fourteenth Amendments. Appellees Jim Dan and Diane Hirsch intervened as plaintiffs in the suit, claiming that the prosecution of Harris would inhibit them as members of the Progressive Labor Party from peacefully advocating the program of their party, which was to replace capitalism with socialism and to abolish the profit system of production in this country. Appellee Farrell Broslawsky, an instructor in history at Los Angeles Valley College, also intervened claiming that the prosecution of Harris made him uncertain as to whether he could teach about the doctrines of Karl Marx or read from the Communist Manifesto as part of his classwork. All claimed that unless the United States court restrained the state prosecution of Harris each would suffer immediate and irreparable injury. A three-judge Federal District Court, convened pursuant to 28 U. S. C. § 2284, held that it had jurisdiction and power to restrain the District Attorney from prosecuting, held that the State's Criminal Syndicalism Act was void for vagueness and

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advocacy, teaching, or aid and abetment of, or advising, criminal syndicalism; or

"4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism; or

"5. Wilfully by personal act or conduct, practices or commits any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism, with intent to accomplish a change in industrial ownership or control, or effecting any political change;

"Is guilty of a felony and punishable by imprisonment in the state prison not less than one nor more than 14 years."

overbreadth in violation of the First and Fourteenth Amendments, and accordingly restrained the District Attorney from "further prosecution of the currently pending action against the plaintiff Harris for alleged violation of the Act." 281 F. Supp. 507, 517 (1968).

The case is before us on appeal by the State's District Attorney Younger, pursuant to 28 U. S. C. § 1253. In his notice of appeal and his jurisdictional statement appellant presented two questions: (1) whether the decision of this Court in *Whitney* v. *California*, 274 U. S. 357, holding California's law constitutional in 1927 was binding on the District Court and (2) whether the State's law is constitutional on its face. In this Court the brief for the State of California, filed at our request, also argues that only Harris, who was indicted, has standing to challenge the State's law, and that issuance of the injunction was a violation of a long-standing judicial policy and of 28 U. S. C. § 2283, which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

See, *e. g.*, *Atlantic Coast Line R. Co.* v. *Engineers*, 398 U. S. 281, 285–286 (1970). Without regard to the questions raised about *Whitney* v. *California*, *supra*, since overruled by *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969), or the constitutionality of the state law, we have concluded that the judgment of the District Court, enjoining appellant Younger from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state court procedings except under special circumstances.[2] We express no view about the

[2] Appellees did not explicitly ask for a declaratory judgment in their complaint. They did, however, ask the District Court to grant

circumstances under which federal courts may act when there is no prosecution pending in state courts at the time the federal proceeding is begun.

I

Appellee Harris has been indicted, and was actually being prosecuted by California for a violation of its Criminal Syndicalism Act at the time this suit was filed. He thus has an acute, live controversy with the State and its prosecutor. But none of the other parties plaintiff in the District Court, Dan, Hirsch, or Broslawsky, has such a controversy. None has been indicted, arrested, or even threatened by the prosecutor. About these three the three-judge court said:

> "Plaintiffs Dan and Hirsch allege that they are members of the Progressive Labor Party, which advocates change in industrial ownership and political change, and that they feel inhibited in advocating the program of their political party through peaceful, non-violent means, because of the presence of the Act 'on the books,' and because of the pending criminal prosecution against Harris. Plaintiff Broslawsky is a history instructor, and he alleges that he is uncertain as to whether his normal practice of teaching his students about the doctrines of Karl Marx and reading from the Communist Manifesto and other revolutionary works may subject him to prosecution for violation of the Act." 281 F. Supp., at 509.

"such other and further relief as to the Court may seem just and proper," and the District Court in fact granted a declaratory judgment. For the reasons stated in our opinion today in *Samuels* v. *Mackell*, *post*, we hold that declaratory relief is also improper when a prosecution involving the challenged statute is pending in state court at the time the federal suit is initiated.

Whatever right Harris, who is being prosecuted under the State Syndicalism law may have, Dan, Hirsch, and Broslawsky cannot share it with him. If these three had alleged that they would be prosecuted for the conduct they planned to engage in, and if the District Court had found this allegation to be true—either on the admission of the State's district attorney or on any other evidence—then a genuine controversy might be said to exist. But here appellees Dan, Hirsch, and Broslawsky do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible. They claim the right to bring this suit solely because, in the language of their complaint, they "feel inhibited." We do not think this allegation, even if true, is sufficient to bring the equitable jurisdiction of the federal courts into play to enjoin a pending state prosecution. A federal lawsuit to stop a prosecution in a state court is a serious matter. And persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs in such cases. See *Golden* v. *Zwickler*, 394 U. S. 103 (1969). Since Harris is actually being prosecuted under the challenged laws, however, we proceed with him as a proper party.

II

Since the beginning of this Country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts. In 1793 an Act unconditionally provided: ". . . nor shall a writ of injunction be granted to stay proceedings in any court of any state . . . ." 1 Stat. 335, c. 22. A comparison of the 1793 Act with 28 U. S. C. § 2283, its present-day successor, graphically illustrates how few and minor have been the exceptions granted from the flat, prohibitory language

of the old Act. During all this lapse of years from 1793 to 1970 the statutory exceptions to the 1793 congressional enactment have been only three: (1) ". . . except as expressly authorized by Act of Congress . . ."; (2) ". . . where necessary in aid of its jurisdiction . . ."; and (3) ". . . to protect or effectuate its judgments . . ." In addition, a judicial exception to the longstanding policy evidenced by the statute has been made where a person about to be prosecuted in a state court can show that he will, if the proceeding in the state court is not enjoined, suffer irreparable damages. See *Ex parte Young*, 209 U. S. 123 (1908).[3]

The precise reasons for this long-standing public policy against federal court interference with state court proceedings have never been specifically identified but the primary sources of the policy are plain. One is the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief. The doctrine may originally have grown out of circumstances peculiar to the English judicial system and not applicable in this country, but its fundamental purpose of restraining equity jurisdiction within narrow limits is equally important under our Constitution, in order to prevent erosion of the role of the jury and avoid a duplication of legal proceedings and legal sanctions where a single suit would be adequate to protect the rights asserted. This underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital

[3] For an interesting discussion of the history of this congressional policy up to 1941, see *Toucey* v. *New York Life Insurance Company*, 314 U. S. 118 (1941).

consideration, the notion of "comity," that is a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future.

This brief discussion should be enough to suggest some of the reasons why it has been perfectly natural for our cases to repeat time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions. In *Fenner* v. *Boykin*, 271 U. S. 240 (1926), suit had been brought in the Federal District Court seeking to enjoin state prosecutions under a recently

enacted state law that allegedly interfered with the free flow of interstate commerce. The Court, in a unanimous opinion made clear that such a suit, even with respect to state criminal proceedings not yet formally instituted, could be proper only under very special circumstances:

> "*Ex parte Young*, 209 U. S. 123, and following cases have established the doctrine that when absolutely necessary for the protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely on his defense in the state courts, even though this involves a challenge to the validity of some statute, unless it plainly appears that this course would not afford adequate protection." *Id.*, at 243–244.

These principles made clear in the *Fenner* case have been repeatedly followed and reaffirmed in other cases involving threatened prosecutions. See, *e. g.*, *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89 (1935); *Beal* v. *Missouri Pac. R. Co.*, 312 U. S. 45 (1941); *Watson* v. *Buck*, 313 U. S. 387 (1941); *Williams* v. *Miller*, 317 U. S. 599 (1942); *Douglas* v. *City of Jeannette*, 319 U. S. 157 (1943).

In all of these cases the Court stressed the importance of showing irreparable injury, the traditional prerequisite to obtaining an injunction. In addition, however, the Court also made clear that in view of the fundamental policy against federal interference with state criminal

prosecutions, even irreparable injury is insufficient unless it is "both great and immediate." *Fenner, supra.* Certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, could not by themselves be considered "irreparable" in the special legal sense of that term. Instead, the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution. See, *e. g., Ex parte Young, supra,* at 145–147. Thus, in the *Buck* case, *supra,* 313 U. S., at 400, we stressed:

> "Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. 'No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.' *Beal* v. *Missouri Pacific Railroad Corp.,* 312 U. S., 45, 49."

And similarly, in *Douglas, supra,* we made clear, after reaffirming this rule, that:

> "It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith . . . ." 319 U. S., at 164.

This is where the law stood when the Court decided *Dombrowski* v. *Pfister,* 380 U. S. 479 (1965), and held that an injunction against the enforcement of certain state criminal statutes could properly issue under the

circumstances presented in that case.[4] In *Dombrowski*, unlike many of the earlier cases denying injunctions, the complaint made substantial allegations that:

> "the threats to enforce the statutes against appellants are not made with any expectation of securing valid convictions, but rather are part of a plan to employ arrests, seizures, and threats of prosecution under color of the statutes to harass appellants and discourage them and their supporters from asserting and attempting to vindicate the constitutional rights of Negro citizens of Louisiana." 380 U. S., at 482.

The appellants in *Dombrowski* had offered to prove that their offices had been raided and all their files and records

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[4] Neither the cases dealing with standing to raise claims of vagueness or overbreadth, *e. g., Thornhill* v. *Alabama*, 310 U. S. 88 (1940), nor the loyalty oath cases, *e. g., Baggett* v. *Bullitt*, 377 U. S. 360 (1964), changed the basic principles governing the propriety of injunctions against state criminal prosecutions. In the standing cases we allowed attacks on overly broad or vague statutes in the absence of any showing that the defendant's conduct could not be regulated by some properly drawn statute. But in each of these cases the statute was not merely vague or overly broad "on its face"; the statute held to be vague or overly broad as construed and *applied* to a particular defendant in a particular case. If the statute had been too vague as written but sufficiently narrow as applied, prosecutions and convictions under it would ordinarily have been permissible. See *Dombrowski*, *supra*, 380 U. S., at n. 7.

In *Baggett* and similar cases we enjoined state officials from discharging employees who failed to take certain loyalty oaths. We held that the States were without power to exact the promises involved, with their vague and uncertain content concerning advocacy and political association, as a condition of employment. Apart from the fact that any plaintiff discharged for exercising his constitutional right to refuse to take the oath would have had no adequate remedy at law, the relief sought was of course the kind that raises no special problem—an injunction against allegedly unconstitutional state action (discharging the employees) that is not part of a criminal prosecution.

seized pursuant to search and arrest warrants that were later summarily vacated by a state judge for lack of probable cause. They also offered to prove that despite the state court order quashing the warrants and suppressing the evidence seized, the prosecutor was continuing to threaten to initiate new prosecutions of appellants under the same statutes, was holding public hearings at which photostatic copies of the illegally seized documents were being used, and was threatening to use other copies of the illegally seized documents to obtain grand jury indictments against the appellants on charges of violating the same statutes. These circumstances, as viewed by the Court sufficiently establish the kind of irreparable injury, above and beyond that associated with the defense of a single prosecution brought in good faith, that had always been considered sufficient to justify federal intervention. See, *e. g., Beal, supra,* 312 U. S., at 50. Indeed, after quoting the Court's statement in *Douglas* concerning the very restricted circumstances under which an injunction could be justified, the Court in *Dombrowski* went on to say:

> "But the allegations in this complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights. They suggest that a substantial loss of or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury." 380 U. S., at 485–486.

And the Court made clear that even under these circumstances the District Court issuing the injunction would have continuing power to lift it at any time and remit the plaintiffs to the state courts if circumstances warranted. 380 U. S., at 491, 492. Similarly, in *Cameron*

v. *Johnson*, 390 U. S. 611 (1968), a divided Court denied an injunction after finding that the record did not establish the necessary bad faith and harassment; the dissenting Justices themselves stressed the very limited role to be allowed for federal injunctions against state criminal prosecutions and differed with the Court only on the question whether the particular facts of that case were sufficient to show that the prosecution was brought in bad faith.

It is against the background of these principles that we must judge the propriety of an injunction under the circumstances of the present case. Here a proceeding was already pending in the state court, affording Harris an opportunity to raise his constitutional claims. There is no suggestion that this single prosecution against Harris is brought in bad faith or is only one of a series of repeated prosecutions to which he will be subjected. In other words, the injury that Harris faces is soley "that incidental to every criminal proceeding brought lawfully and in good faith," *Douglas, supra*, and therefore under the settled doctrine we have already described he is not entitled to equitable relief "even if such statutes are unconstitutional," *Buck, supra*.

The District Court, however, thought that the *Dombrowski* decision substantially broadened the availability of injunctions against state criminal prosecutions and that under that decision the federal courts may give equitable relief, without regard to any showing of bad faith or harassment, whenever a state statute is found "on its face" to be vague or overly broad, in violation of the First Amendment. We recognize that there are some statements in the *Dombrowski* opinion that would seem to support this argument. But as we have already seen, such statements were unnecessary to the decision of that case, because the Court found that the plaintiffs had alleged a basis for equitable relief under the long-estab-

lished standards. In addition, we do not regard the reasons adduced to support this position as sufficient to justify such a substantial departure from the established doctrines regarding the availability of injunctive relief. It is undoubtedly true, as the Court stated in *Dombrowski*, that "A criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms." 380 U. S., at 486. But this sort of "chilling effect," as the Court called it, should not by itself justify federal intervention. In the first place, the chilling effect cannot be satisfactorily eliminated by federal injunctive relief. In *Dombrowski* itself the Court stated that the injunction to be issued there could be lifted if the State obtained an "acceptable limiting construction" from the state courts. The Court then made clear that once this was done, prosecutions could then be brought for conduct occurring before the narrowing construction was made, and proper convictions could stand so long as the defendants were not deprived of fair warning. 380 U. S., at 491, n. 7. The kind of relief granted in *Dombrowski* thus does not effectively eliminate uncertainty as to the coverage of the state statute and leaves most citizens with virtually the same doubts as before regarding the danger that their conduct might eventually be subjected to criminal sanctions. The chilling effect can, of course, be eliminated by an injunction that would prohibit any prosecution whatever for conduct occurring prior to a satisfactory rewriting of the statute. But the States would then be stripped of all power to prosecute even the socially dangerous and constitutionally unprotected conduct that had been covered by the statute, until a new statute could be passed by the state legislature and approved by the federal courts in potentially lengthy trial and appellate proceedings. Thus, in *Dombrowski* itself the Court carefully

reaffirmed the principle that even in the direct prosecution in the State's own courts, a valid narrowing construction can be applied to conduct occurring prior to the date when the narrowing construction was made, in the absence of fair warning problems.

Moreover, the existence of a "chilling effect," even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action. Where a statute does not directly abridge free speech, but—while regulating a subject within the State's power—tends to have the incidental effect of inhibiting First Amendment rights, it is well settled that the statute can be upheld if the effect on speech is minor in relation to the need for control of the conduct and the lack of alternative means for doing so. *Schneider* v. *State*, 308 U. S. 147 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940); *Mine Workers* v. *Illinois Bar Assn.*, 389 U. S. 217 (1967). Just as the incidental "chilling effect" of such statutes does not automatically render them unconstitutional, so the chilling effect that admittedly can result from the very existence of certain laws on the statute books does not in itself justify prohibiting the State from carrying out the important and necessary task of enforcing these laws against socially harmful conduct that the State believes in good faith to be punishable under its laws and the Constitution.

Beyond all this is another, more basic consideration. Procedures for testing the constitutionality of a statute "on its face" in the manner apparently contemplated by *Dombrowski*, and for then enjoining all action to enforce the statute until the State can obtain court approval for a modified version, are fundamentally at odds with the function of the federal courts in our constitutional plan. The power and duty of the judiciary to declare laws unconstitutional is in the final analysis derived from

its responsibility for resolving concrete disputes brought before the courts for decision; a statute apparently governing a dispute cannot be applied by judges, consistently with their obligations under the Supremacy Clause, when such an application of the statute would conflict with the Constitution. *Marbury* v. *Madison*, 1 Cranch 137 (1803). But this vital responsibility, broad as it is, does not amount to an unlimited power to survey the statute books and pass judgment on laws before the courts are called upon to enforce them. Ever since the Constitutional Convention rejected a proposal for having members of the Supreme Court render advice concerning pending legislation [5] it has been clear that, even when suits of this kind involve a "case or controversy" sufficient to satisfy the requirements of Article III of the Constitution, the task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, see, *e. g.*, *Landry* v. *Daley*, 280 F. Supp. 938 (D. C. N. D. Ill. 1968), reversed *sub nom.* *Boyle* v. *Landry*, *post*, ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided. In light of this fundamental conception of the Framers as to the proper place of the federal courts in the governmental processes of passing and enforcing laws, it can seldom be appropriate for these courts to exercise any such power of prior approval or veto over the legislative process.

[5] See 1 The Records of the Federal Convention 1787 (Farrand ed. 1911) 21.

For these reasons, fundamental not only to our federal system but also to the basic functions of the Judicial Branch of the National Government under our Constitution, we hold that the *Dombrowski* decision should not be regarded as having upset the settled doctrines that have always confined very narrowly the availability of injunctive relief against state criminal prosecutions. We do not think that opinion stands for the proposition that a federal court can properly enjoin enforcement of a statute solely on the basis of a showing that the statute "on its face" abridges First Amendment rights. There may, of course, be extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment. For example, as long ago as the *Buck* case, *supra*, we indicated:

> "It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." 313 U. S., at 402.

Other unusual situations calling for federal intervention might also arise, but there is no point in our attempting now to specify what they might be. It is sufficient for purposes of the present case to hold, as we do, that the possible unconstitutionality of a statute "on its face" does not in itself justify an injunction against good faith attempts to enforce it, and that appellee Harris has failed to make any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief. Because our holding rests on the absence of the factors necessary under equitable principles to justify federal intervention, we have no occasion to

consider whether 28 U. S. C. § 2283, which prohibits an injunction against state court proceedings "except as expressly authorized by Act of Congress" would in and of itself be controlling under the circumstances of this case.

The judgment of the District Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed.

For opinion of MR. JUSTICE DOUGLAS dissenting in this case see No. 4.

SUPREME COURT OF THE UNITED STATES

No. 2.*—October Term, 1970

Evelle J. Younger, Appellant, *v.* John Harris, Jr., et al.	On Appeal From the United States District Court for the Central District of California.

[February 23, 1971]

Mr. Justice Stewart, with whom Mr. Justice Harlan joins, concurring.

The questions the Court decides today are important ones. Perhaps as important, however, is a recognition of the areas into which today's holdings do not necessarily extend. In all of these cases, the Court deals only with the proper policy to be followed by a federal court when asked to intervene by injunction or declaratory judgment in a criminal prosecution which is contemporaneously pending in a state court.

In basing its decisions on policy grounds, the Court does not reach any questions concerning the independent force of the federal anti-injunction statute, 28 U. S. C. § 2283. Thus we do not decide whether the word "injunction" in § 2283 should be interpreted to include a declaratory judgment, or whether an injunction to stay proceedings in a state court is "expressly authorized" by

*Together with No. 4, *John S. Boyle et al.* v. *Lawrence Landry et al.*, on appeal from the United States District Court for the Northern District of Illinois; No. 7, *George Samuels et al.* v. *Thomas J. Mackell et al.*, and No. 9, *Fred Fernandez* v. *Thomas J. Mackell et al.*, on appeals from the United States District Court for the Southern District of New York; No. 41, *Frank Dyson et al.* v. *Brent Stein*, on appeal from the United States District Court for the Northern District of Texas, and No. 83, *Garrett H. Byrne et al.* v. *Serafim Karalexis et al.*, on appeal from the United States District Court for the District of Massachusetts.

§ 1 of the Civil Rights Act of 1871, 42 U. S. C. § 1983.[1] And since all these cases involve state criminal prosecutions, we do not deal with the considerations which should govern a federal court when it is asked to intervene in state civil proceedings, where, for various reasons, the balance might be struck differently.[2] Finally, the Court today does not resolve the problems involved when a federal court is asked to give injunctive or declaratory relief from *future* state criminal prosecutions.

The Court confines itself to deciding the policy considerations that in our federal system must prevail when federal courts are asked to interfere with pending state prosecutions. Within this area, we hold that a federal court must not, save in exceptional and extremely limited circumstances, intervene by way of either injunction or declaration in an existing state criminal prosecution.[3]

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[1] See also *Cameron* v. *Johnson*, 390 U. S. 611, 613–614 n. 3; *Dombrowski* v. *Pfister*, 380 U. S. 479, 484 n. 2.

[2] Courts of equity have traditionally shown greater reluctance to intervene in criminal prosecutions than in civil cases. See *Younger* v. *Harris*, *ante*, at 6; *Douglas* v. *City of Jeannette*, 319 U. S. 157, 163–164. The offense to state interests is likely to be less in a civil proceeding. A State's decision to classify conduct as criminal provides some indication of the importance it has ascribed to prompt and unencumbered enforcement of its law. By contrast, the State might not even be a party in a proceeding under a civil statute.

Cf. *Law Students Civil Rights Research Council* v. *Wadmond*, — U. S. —; *Wisconsin* v. *Constantineau*, — U. S. —; *Rosado* v. *Wyman*, 397 U. S. 397.

These considerations would not, to be sure, support any distinction between civil and criminal proceedings should the ban of 28 U. S. C. § 2283, which makes no such distinction, be held unaffected by 42 U. S. C. § 1983.

[3] The negative pregnant in this sentence—that a federal court may, as a matter of policy, intervene when such "exceptional and extremely limited circumstances" are found—is subject to any further limitations that may be placed on such intervention by 28 U. S. C. § 2283.

Such circumstances exist only when there is a threat of irreparable injury "both great and immediate." A threat of this nature might be shown if the state criminal statute in question were patently and flagrantly unconstitutional on its face, *Younger* v. *Harris, ante,* at 16; cf. *Evers* v. *Dwyer,* 358 U. S. 202, or if there has been bad faith and harassment—official lawlessness—in a statute's enforcement, *Younger* v. *Harris, ante,* at 9–12. In such circumstances the reasons of policy for deferring to state adjudication are outweighed by the injury flowing from the very bringing of the state proceedings, by the perversion of the very process which is supposed to provide vindication, and by the need for speedy and effective action to protect federal rights. Cf. *Georgia* v. *Rachel,* 384 U. S. 780.

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Mr. Justice Brennan, with whom Mr. Justice White and Mr. Justice Marshall join, concurring in the result.

I agree that the judgment of the District Court should be reversed. Appellee Harris had been indicted for violations of the California Criminal Syndicalism Act before he sued in federal court. He has not alleged that the prosecution was brought in bad faith to harass him. His constitutional contentions may be adequately adjudicated in the state criminal proceeding, and federal intervention at his instance was therefore improper.*

*The District Court erroneously interpreted *Zwickler* v. *Koota*, 389 U. S. 241 (1967), as authorizing federal court consideration of a constitutional claim at issue in a pending state proceeding, whether or not the federal court plaintiff had presented his claim to the state court. It suffices here to note that in *Zwickler* no state proceeding was pending at the time jurisdiction attached in the federal court. The court below also thought it significant that appellee Harris had raised his constitutional claim in the state courts in a motion to dismiss the indictment and in petitions in the state appellate courts for a writ of prohibition. It was questioned at oral argument whether constitutional issues could properly be raised by the procedures invoked by Harris, and it was suggested that the denial of Harris' motions did not necessarily involve rejection of his constitutional claims. However, even if the California courts had at that interlocutory stage rejected Harris' constitutional arguments, that rejection would not have provided a justification for intervening by the District Court. Harris could have sought direct review of that

Appellees Hirsch and Dan have alleged that they "feel inhibited" by the statute and the prosecution of Harris from advocating the program of the Progressive Labor Party. Appellee Broslawsky has alleged that he "is uncertain" whether as an instructor in college history he can under the statute give instruction relating to the Communist Manifesto and similar revolutionary works. None of these appellees has stated any ground for a reasonable expectation that he will actually be prosecuted under the statute for taking the actions contemplated. The court below expressly declined to rely on any finding "that . . . Dan, Hirsch or Broslawsky stand[s] in any danger of prosecution by the [State], because of the activities they ascribed to themselves in the complaint. . . ." It is true, as the court below pointed out, that "[w]ell-intentioned prosecutors and judicial safeguards do not neutralize the vice of a vague law," *Baggett* v. *Bullitt*, 377 U. S. 360, 373 (1964), but still there must be a live controversy under Article III. No threats of prosecution of these appellees are alleged. Although Dan and Hirsch have alleged that they desire to advocate doctrines of the Progressive Labor Party, they have not asserted that their advocacy will be of the same genre as that which brought on the prosecution of Harris. In short, there is no reason to think that California has any ripe controversy with them. See *Golden* v. *Zwickler*, 394 U. S. 103 (1969); *Perez* v. *Ledesma*, *post*. (Opinion of BRENNAN, J.)

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rejection of his constitutional claims or he could have renewed the claims in requests for instructions, and on direct review of any conviction in the state courts and in this Court. These were the proper modes for presentation and these the proper forums for consideration of the constitutional issues.